IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5055 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE D.H.WAGHELA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DAHYABHAI JAGJIVANBHAI PATEL & 1 - Petitioner(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MR DEVARSHI D VAIDYA for Petitioner(s) : 1 - 2.
Mr M R Mengdey, Asstt.GOVERNMENT PLEADER for Respondent(s) : 1,
None for Respondent(s) : 2 - 3.
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CORAM : HONOURABLE MR.JUSTICE D.H.WAGHELA
Date : 21/03/2006

ORAL JUDGMENT

1. Invoking Articles 14 and 226 of the Constitution of India, the petitioners have approached this court with the prayer to set aside the order dated 30.4.2003 of the Deputy Collector, Stamp Duty Valuation Organization,

Section I, Vadodara whereby the market value of the property in question was fixed after notice to the petitioner and deficit duty of Rs 4,00,984/- was determined.

2. Admittedly, the impugned order was made under the provisions of Section 32A of the Bombay Stamp Act, 1958 and it could be challenged under the provisions of Section 32B of the said Act. It is the case of the petitioners that an application dated 28.6.2003 was made to the Chief Revenue Controlling Authority for the purpose of reducing amount of deposit required to be made for the purpose of drawing up a statement and making of a reference under section 32B by the Collector. Though copy of the said application is annexed with the petition as Annexure 'B', there is no evidence on record of service of that application. The only ground sought to be made out by the learned Counsel for the petitioners for delay of about three years in approaching this Court was that the aforesaid application dated 28.6.2003 was made but not decided and awaiting such decision, the petitioner had not approached this Court or taken any other remedy.

3. The provisions of section 32B of the Bombay Stamp

Act, 1958 (for short, 'the Act') read as under:

"32B-**Statement of the case by the Collector:**

(1) Any person aggrieved by an order of the Collector determining the market value under section 31 or, as the case may be, under section 32A, may, after depositing with the Collector 25% of the amount of duty or, as the case may be, the amount of the difference of duty payable by him by application presented within a period of ninety days from the date of such order and accompanied by a fee of one hundred rupees, require the Collector to draw up a statement of the case and refer it to the Chief Controlling Revenue Authority and the Collector shall, within sixty days of the receipt of such application, draw up a statement of the case and refer it to the Authority.

Provided that where in any particular case the Authority is of the opinion that the deposit of the amount by the applicant will cause undue hardship to him, the Authority may, in its discretion, either unconditionally or subject to such

conditions as it may think fit to impose, dispense with a part of the amount deposited so however that the part of the amount so dispensed with shall not exceed fifty percent of the amount deposited or required to be deposited.

(2) Such Authority shall consider the case and send a copy of its decision to the Collector who shall proceed to assess and charge the duty (if any) in conformity with such decision.

(3) The decision given by the Authority under sub-section (2) shall be final."

4. A bare reading of the above statutory provisions clearly reveal that the person aggrieved by the order of the Collector made under Section 32A of the Act has the remedy of seeking a reference after depositing 25% of the amount of duty or the amount of the difference of duty payable by him. If the conditions precedent for seeking a reference are fulfilled, the Collector is duty bound to draw up statement of the case and refer it to the Chief Controlling Revenue Authority. There is no provision for making direct application to the Chief Controlling Revenue Authority for depositing any amount lesser than required

under the aforesaid provisions and, in any case, no ground whatsoever was made out in the application alleged to have been made by the petitioner for the purpose of reducing the amount required to be deposited.

5. In the above facts, it is absolutely clear that not only that the petitioners were aware of the impugned order dated 30.4.2003 and served with the notice contained therein to pay within 90 days the amount of difference of duty but were informed about the liability to pay interest and about the fact that the document would remain withheld till the payment was made. It is also clear that the petitioners were aware of the remedy available to them and even went through motions of availing such remedy by a perverse reading of the provision. It is, therefore, abundantly clear that not only that the petitioners had no reasonable ground not to avail the alternative remedy of reference before approaching this Court but they had deliberately preferred to approach this Court only when the consequential proceedings of recovery by attachment were taken up by the Authority. Thus, the extraordinary writ jurisdiction of the High Court under Article 226 of the Constitution appears to have been invoked, in effect, to

nullify or evade only the effect of the impugned order which was consciously not challenged in accordance with law, even though the statutory remedy was provided therefor. In other words, the order made before three years is sought to be directly challenged through a writ petition without resorting to the statutory alternative remedy and without explaining the inordinate and deliberate delay in taking the statutory remedy. This can as well be regarded as an abuse of the process of Court which cannot be acquiesced or encouraged in the name of hardship or interest of justice.

6. It requires to be noted that the document executed or entered into by the petitioners shows value of the property to be Rs.60,950/- of which the market value determined under the Rules by the impugned order is Rs. 29,25,600/-. It is also equally surprising that, although the amounts were required to be recovered with interest according to the impugned order, the notice of attachment and other proceedings for recovery do not mention anything about the interest due.

7. In the above facts and circumstances, the petition is barred by deliberate delay, laches and non-availing of

the alternative statutory remedy provided in the provisions of section 32B of the Bombay Stamp Act, 1958. Accordingly the petition is dismissed *in limine*.

[D H Waghela, J.]

msp